the protection of society and the maintenance of peace and order; and after this duty is performed, both law and equity forbid that the city or state be compelled to account for the same salary to any other party who may subsequently be decreed as the proper officer." Nevertheless, a very respectable line of cases lay down the contrary doctrine that the right of a *de jure* officer to recover his salary from the public corporation is not impaired by payment to the officer *de facto*. *Mayor & Aldermen of Memphis* v. *Woodward,* 12 Heisk. (Tenn.) 499, 27 Am. Rep. 750; *Andrews* v. *Portland,* 79 Me. 484, 10 Am. St. Rep. 280; *State* v. *Carr,* 129 Ind. 44, 28 N. E. 88; *Tanner* v. *Edwards,* 31 Utah 80, 86 Pac. 765. A good discussion of the authorities may be found in the notes in 19 L. R. A. 689; 16 L. R. A. (N. S.) 794; and 10 Am. St. Rep. 284. The reason for this view is found in the *wrongful* payment to one not entitled to receive it; but keeping in mind that the reason for the *de facto* doctrine is to further the public interests, it is difficult to understand why such payment, when public necessity really demands it, should be regarded as wrongful. Several of the cases may be distinguished on their facts, where the city or state failed to act in good faith, or where the person to whom payment was made was a usurper or intruder. Yet in no case does the principal argument for the majority rule seem to be successfully controverted; and the statement made by the court in the instant case is in conflict with the better view.

PLEADING—NECESSITY FOR ALLEGING TRESPASS IN ASSUMPSIT FOR USE AND OCCUPATION AGAINST A TRESPASSER.—§ 11207 of the COMPILED LAWS OF MICHIGAN allows a party having a cause of action for the taking of timber or other trespass on lands to waive the tort and bring assumpsit therefor. In assumpsit for use and occupation brought by the owner of premises against one occupying under claim of right, *held,* that an action for use and occupation, being founded on contract, express or implied, will not lie where the occupancy of the one sought to be charged has been tortious; and that an action for assumpsit under the above statute, based on a waiver of tort, cannot be maintained where there has not been any reference in the declaration to the statute, nor any allegation of the fact of the trespass. *Smith* v. *Haight* (Mich. 1915), 154 N. W. 563.

The common count for use and occupation has not been allowed against a tortious occupant of land. *Ward* v. *Warner,* 8 Mich. 508; *M., H. & O. R. Co.* v. *Harlow,* 37 Mich. 554. With all the technical elements present of a quasi-contractual obligation to pay for the use and occupation, the remedy has been denied for historical reasons. WOODWARD, QUASI-CONTRACTS, § 284, and cases cited. But see the opinion of MANNING, J., in *Welch* v. *Bagg,* 12 Mich. 41, where assumpsit for pasturing cattle was allowed against a trespasser. Before the above statute was passed, in Michigan there could be no recovery in assumpsit for the value of property converted but not sold. *Watson* v. *Stever,* 25 Mich. 386. In this case assumpsit was held to be an improper remedy against a trespasser who cut and carried away the plaintiff's timber. The statute above, passed in 1875, was designed to remedy this situation. The suggestion that the plaintiff might waive the tort of occupying his

premises and bring assumpsit for use and occupation puts a much broader construction upon this statute than any previous decision has done. But the suggestion, that in order to take advantage of this statute it is necessary either to refer to the statute or to allege the trespass in the declaration, is more difficult to understand. It was held in *Lockwood* v. *Thunder Bay River Boom Co.*, 42 Mich. 536, 4 N. W. 292, that the statute operated only to provide that a duty to pay damages for a trespass might be treated as an implied agreement, but that the damages must be shown in the declaration to have accrued out of a trespass. There is a similar holding with regard to the statutory action of assumpsit where a fraud is waived. *Anderson Carriage Co.* v. *Pungs*, 134 Mich. 79, 95 N. W. 985. A declaration in assumpsit for the value of goods converted and sold by the defendant need not allege the conversion or sale. *Newman* v. *Olney*, 118 Mich 545, 77 N. W. 9; *Brown* v. *Foster*, 137 Mich. 35, 100 N. W. 167. But see the dicta in *Farwell* v. *Myers*, 59 Mich. 179, 26 N. W. 328, and in *Tregent* v. *Maybee*, 54 Mich. 226, 19 N. W. 962. There would appear to be no more necessity for alleging the tort where the right to bring assumpsit exists by virtue of a statute than if it exists independent of one. Nor does the technical construction given to the statute in *Lockwood* v. *Thunder Bay River Boom Co.*, supra, seem in accord with the words of the statute. The statute does not create the cause of action, but merely extends the use of certain pre-existing forms of action. Inasmuch as the MICHIGAN JUDICIATE ACT of 1915 provides "that in case of trespass on lands, and in cases where an action on the case for fraud or deceit may by law be brought, and in cases of conversion of personal property into money, the plaintiff may bring and maintain either an action of assumpsit, or an action of trespass on the case," it would seem important that the courts should explain more specifically the reasons for the necessity of alleging the tort where assumpsit is brought.

REWARDS—PREVIOUS KNOWLEDGE OF OFFER NOT NECESSARY.—A statute authorized the Governor to offer rewards, not to exceed a specified amount, for the arrest and conviction of the persons guilty of a certain murder. The Governor offered the reward, and the plaintiffs, who killed the murderers, now seek to recover the reward, although they had no knowledge of the reward beforehand. *Held,* prior knowledge of the reward was not necessary; the right to the reward followed by operation of law upon the killing of the murderers. *Smith, et al.* v. *State* (Nev. 1915) 151 Pac. 512.

The court adopts as the reason for its decision the dictum of the case of *Broadnax* v. *Ledbetter*, 100 Tex. 375, 99 S. W. 1111, 9 L. R. A. (N. S.) 1057, to the effect that right to a reward offered by the government in accordance with law may follow by operation of law, and without the aid of contract, upon the performance of that for which the reward is given. Apparently this is the first case in which the conclusion, that one who had no prior knowledge of the reward is entitled to it upon performance of the condition, has been reached by this line of reasoning. The court does not make it clear just what reasons go to substantiate this theory, but suggests that since this is a special statute passed for this particular case, and since everyone is pre-